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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 CATHERINE E. AVILEZ, as an
12 individual and on behalf of all others
13 similarly situated,

14 Plaintiffs,

15 vs.

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17 PINKERTON GOVERNMENT
18 SERVICES, INC., a corporation; and
19 DOES 1 through 50, inclusive,

20 Defendants.
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Case No.: SACV 11-0493-DOC (RZx)

ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
[199]

ORDER

Plaintiff Catherine E. Avilez (“Plaintiff” or “Class Representative”), having made an application pursuant to Fed. R. Civ. P. Rule 23(e) for entry of an order (a) preliminarily approving the settlement of the litigation pursuant to the Joint Stipulation of Class Action Settlement and Release (the “Agreement”); (b) conditionally certifying for settlement purposes only, a Settlement Class¹ as follows: “All individuals currently and formerly employed by Defendant in California as security guards who worked a shift of at least five (5) hours at any time from September 17, 2009 through December 31, 2016,” for purposes of proceedings in connection with the final approval of the Agreement; (c) approving the form of Class Notice of Settlement and directing the manner of delivery thereof; (d) approving Larry W. Lee and Kristen Agnew of Diversity Law Group, P.C.; Edward W. Choi and Paul M. Yi of Law Office of Choi & Associates, as Class Counsel and Plaintiff as Class Representative.

IT IS HEREBY ORDERED THAT:

1. All defined terms contained herein shall have the same meaning as set forth in the Agreement executed by the Parties and filed with this Court.

2. The Agreement is hereby PRELIMINARILY APPROVED as appearing on its face to be fair, reasonable, and adequate and to have been the product of serious, informed, and extensive arm’s-length negotiations among the Plaintiff and Defendant Securitas Critical Infrastructure Services, Inc., formerly known as Pinkerton Government Services, Inc. (“Defendant”). In making this preliminary finding, the Court considered the nature of the claims, the relative strength of Plaintiff’s claims, the amounts and kinds of benefits paid in settlement, the allocation of settlement proceeds among the class members, and the fact that a settlement represents a compromise of the Parties’ respective positions rather than

¹ All capitalized terms used herein, unless otherwise defined, have the same definition contained in the Joint Stipulation of Class Action Settlement and Release.

1 the result of a finding of liability at trial. The Court further preliminarily finds that
2 the terms of the Agreement have no obvious deficiencies and do not improperly
3 grant preferential treatment to any individual class member.

4 3. On October 9, 2012, the Court granted Plaintiff's Motion to Certify
5 Class Action on the following claims: (1) violation of Labor Code §226.7; (2)
6 violation of Labor Code §226; and (3) violation of Cal. Bus. & Prof. Code
7 §§17200 et seq. On March 9, 2015, the Ninth Circuit vacated the Court's
8 certification order and directed the Court to certify a Fed. R. Civ. Proc. 23(c)(4)
9 class, excluding anyone subject to Defendant's Dispute Resolution Agreement, on
10 whether a prima facie case for liability exists. The Court made the modified
11 certification order on June 24, 2015.

12 4. For settlement purposes only, pursuant to Federal Rule of Civil
13 Procedure 23(a) and 23(b)(3), the Court conditionally certifies the following Class:

- 14 (a) All individuals currently and formerly employed by Defendant
15 in California as security guards who worked a shift of at least
16 five (5) hours at any time from September 17, 2009 through
17 December 31, 2016.

18 5. With respect to this provisionally certified class for settlement
19 purposes, if the Agreement does not become final for any reason, the fact that the
20 Parties were willing to stipulate to class certification as part of the Agreement shall
21 have no bearing on, and will not be admissible in connection with, the issue of
22 whether a class in this action should be certified in a non-settlement context. The
23 Court's findings are for purposes of conditionally certifying a Settlement Class and
24 will not have any claim or issue or evidentiary preclusion or estoppel effect in any
25 other action against the Released Parties, or in this Action if the Agreement is not
26 finally approved.

- 27 6. With respect to the provisionally certified class for settlement
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1 purposes only, the Court finds preliminarily, and for purposes of proceeding
2 pursuant to Fed. R. Civ. P. Rule 23(e), that the number of class members is
3 sufficiently numerous, the class members are ascertainable based on the
4 Defendant's records, the Plaintiff's claims are typical of those in the class, and that
5 there is adequate and fair representation.

6 7. Accordingly, for purposes of the Agreement only, this Court hereby
7 CONDITIONALLY CERTIFIES the class as defined above action pursuant to
8 Fed. R. Civ. P. 23(e).

9 8. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby APPOINTS as
10 Class Counsel for settlement purposes only Larry W. Lee and Kristen Agnew of
11 Diversity Law Group, P.C. and Edward W. Choi and Paul M. Yi of Law Office of
12 Choi & Associates. The Court finds that Class Counsel collectively have extensive
13 experience and expertise in prosecuting wage and hour class actions.

14 9. Plaintiff Catherine E. Avilez is approved as Class Representative for
15 the Settlement Class Members for settlement purposes only.

16 10. The Court finds on a preliminary basis that the proposed settlement
17 described in the Agreement (including the monetary provisions, the plan of
18 allocation, the release of claims, the proposed award of attorneys' fees and costs
19 and the Class Representative Service Payments) falls within the "range of
20 reasonableness" and therefore grants preliminary approval of the Agreement.
21 Based on a review of the papers submitted by the Parties, the Court finds that the
22 Agreement is the result of extensive arms-length negotiations conducted after
23 Class Counsel had adequately investigated the claims and became familiar with the
24 strengths and weaknesses of those claims. The assistance of an experienced
25 mediator in the settlement process supports the Court's conclusion that the
26 Agreement is non-collusive.
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28 11. The Court hereby APPROVES Phoenix Settlement Administrators as

1 Claims Administrator for the purposes of this settlement.

2 12. A hearing (the “Final Approval and Fairness Hearing”) is hereby
3 SCHEDULED to be held before the Court on April 17, 2017 at 8: 30 AM, for
4 the following purposes:

- 5 a. to determine finally whether the additionally provisionally
6 certified class satisfies the applicable prerequisites for class
7 action treatment of a settlement class;
- 8 b. to determine whether the proposed Agreement is fair,
9 reasonable and adequate and should be granted final approval
10 by the Court;
- 11 c. to determine whether the Order of Final Approval as provided
12 under the Agreement should be entered, and to determine
13 whether the Released Parties should be released of and from the
14 Released Claims as provided in the Agreement;
- 15 d. to determine whether the proposed plan of allocation of the
16 Settlement Amount is fair and reasonable and should be
17 approved by the Court;
- 18 e. to finally consider the applications for the Class Representative
19 enhancement payments to named Plaintiff;
- 20 f. to finally determine whether Class Counsel’s application for an
21 award of attorneys’ fees and costs is fair, reasonable, and
22 adequate and should be approved by the Court;
- 23 g. to determine that the Settlement Administrator’s costs should
24 be paid from the Settlement Amount; and
- 25 h. to rule upon such other matters as the Court may deem
26 appropriate.
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28 13. The Notice of Pendency of Class Action and Proposed Settlement

1 appended to the Agreement as Exhibit A is hereby APPROVED.

2 14. No later than twenty one (21) calendar days of this Court's Order
3 Granting this Motion for Preliminary Approval or December 31, 2016, whichever
4 is later, Defendant shall provide the Claims Administrator with each Class
5 Member's names, addresses, social security numbers, and the total number of
6 weeks worked by each Settlement Class Member during the Class Periodn
7 ("Settlement Class List").

8 15. No later than ten (10) calendar days of receipt of the Settlement Class
9 List, the Claims Administrator will send via first class mail the documents
10 constituting the Notice of Pendency of Class Action and Proposed Settlement
11 appended to the Agreement as Exhibit A to each Class Member by first-class mail,
12 postage prepaid.

13 16. The Court finds that the Class Notice, along with the related
14 notification materials, constitute the best notice practicable under the
15 circumstances and are in full compliance with the laws of the State of California,
16 the United States Constitution, and the requirements of due process. The Court
17 further finds that the notifications fully and accurately inform the Settlement Class
18 Members of all material elements of the proposed settlement, of the Settlement
19 Class Members' right to dispute their share of the settlement, of the Settlement
20 Class Members' right to be excluded from the Settlement Class, and of each
21 Settlement Class Member's right and opportunity to object to the settlement.

22 17. The Court hereby APPROVES the proposed requests for exclusion
23 deadline of thirty (30) calendar days from the initial mailing of the Notice of
24 Pendency of Class Action and Proposed Settlement.

25 18. With respect to the provisionally certified class, the Court hereby
26 APPROVES the proposed procedure for opting out of the Settlement Class. The
27 date of the postmark on the return-mailing envelope shall be the exclusive means
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1 used to determine whether a request for exclusion has been timely submitted. Any
 2 Settlement Class Member who requests exclusion from the settlement will not be
 3 entitled to any share of the settlement and will not be bound by the Agreement or
 4 have any right to object, appeal or comment thereon. Members of the Class who
 5 fail to submit a valid and timely request for exclusion shall be bound by all terms
 6 of the Agreement and the Order and Final Judgment, regardless of whether they
 7 otherwise have requested exclusion from the settlement.

8 19. All reasonable costs of settlement and claims administration,
 9 including the mailing of Class Notice, shall be paid for as provided in the
 10 Agreement.

11 20. Any Class Member who has not submitted a request for exclusion
 12 may object to the Stipulation of Settlement, or any portion thereof, by filing a
 13 written objection with the Court, and supporting papers, if any, and mailing a copy
 14 to the Claims Administrator at the address that is set forth in the Notice of
 15 Pendency of Class Action and Proposed Settlement as well as Defendants' Counsel
 16 and Plaintiff's Counsel. To be timely, all objections must be postmarked no later
 17 than thirty (30) calendar days following the date of the first mailing of the Notice
 18 by the Claims Administrator ("Objection Deadline"). A written objection must
 19 contain : (1) the name and case number of this lawsuit *AVILEZ v. PINKERTON*
 20 *GOVERNMENT SERVICES, INC.*, Case No. SACV 11-0493-DOC; (2) full name
 21 and current address of the Objecting Class Member; (3) the specific reason(s) for
 22 the objection; and (4) any and all evidence and supporting papers (including,
 23 without limitation, all briefs, written evidence, and declarations) to be considered
 24 by the Court. Any Objecting Class Member that wishes to appear at the Settlement
 25 Hearing and be heard orally in support of, or in opposition to the Settlement, must
 26 state so in the objection sent to the Claims Administrator. Objecting Class
 27 Members will have the right to appear at the Court's hearing to provide final
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1 approval of the Settlement in order to have their objections heard by the Court.

2 Any Settlement Class Member who fails to timely file such a written statement of
3 his or her intention to object shall be foreclosed from making any objection to this
4 settlement or from filing an appeal to the Court's Final Order and Judgment unless
5 otherwise ordered by the Court. The parties shall not be responsible for any fees,
6 costs, or expenses incurred by any Class Member and/or his or her counsel related
7 to any objections to the Settlement and/or appeals arising therefrom.

8 21. Except for any Class Member who has timely submitted a request for
9 exclusion Plaintiff and the Settlement Class Members are enjoined from filing or
10 prosecuting any claims, suits or administrative proceedings regarding the Released
11 Claims.

12 22. It is further ordered that pending further order of this Court, all
13 proceedings in this matter except those contemplated herein and as part of the
14 settlement are stayed.

15 23. All Parties are otherwise ordered to comply with the terms of the
16 Agreement.

17 24. Jurisdiction is hereby retained over this Litigation and the Parties to
18 the Litigation, and each of the Class Members for all matters relating to this
19 Litigation, the Agreement, including (without limitation) all matters relating to the
20 administration, interpretation, effectuation, and/or enforcement of the Agreement
21 and this Order.

22 IT IS SO ORDERED.

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26 DATED: December 12, 2016


HON. DAVID O. CARTER
U.S. DISTRICT COURT JUDGE